

MINUTES OF THE MEETING
OF THE
BOARD OF VETERINARY MEDICINE AND SURGERY

April 24, 2006

ROLL CALL

The meeting was called to order at 8:30 a.m. by Chair David Ylander at the Staybridge Suites Board Room, 2701 Fletcher Avenue, in Lincoln, Nebraska. Board member present and answering roll call were:

David Ylander, DVM, Chairperson
Steven Wright, DVM, Vice-Chair
Don Cain, Jr., DVM
Gail Miller, MA, Secretary

A quorum being present, the meeting convened. Also present were Becky Wisell, Section Administrator, Vicki Bumgarner, Credentialing Coordinator, and Sherri Joyner, Credentialing Specialist, from the Credentialing Division; Roger Brink, Section Leader, Legal Services Division; David Montgomery, Administrator, Administrative Services Division; and Kent Forney, DVM, Member, Board of Health.

ADOPTION OF AGENDA

Cain moved, seconded by Miller, to adopt the Agenda. Voting Aye: Cain, Miller, Wright, Ylander. Voting Nay: None. Motion carried.

COLLABORATIVE PRACTICE WITH OTHER PROFESSIONS

Ylander introduced the subject by stating that today's meeting was an opportunity to share and explore ideas concerning persons from non-veterinarian professions working in collaboration with veterinary medicine. He hoped the meeting would be a way to start addressing the issue, rather than a means to formulate one definitive plan of action.

Montgomery provided the Board with information about the Credentialing Review process, often referred to as the "407 program," which reviews proposals to change the scope of practice for health care professions and proposals to establish new types of credentials. Because the 407 program currently pertains only to professions that practice on humans, Montgomery stated that a 407 review would be required only if the Board would propose changes to the scope of practice of other professions. If the Board, on the other hand, seeks to change or clarify the scope of practice of veterinary medicine only, the review process would not be necessary.

Brink discussed the 1994 Nebraska Supreme Court decision in the case of Dept of Health v. Jeffrey. The Department had filed a lawsuit against Mr. Jeffrey because he was

practicing equine dentistry without a veterinarian license. The Court ruled that equine dentistry was part of the practice of veterinary medicine, and that Mr. Jeffrey's activities constituted the unlicensed practice of veterinary medicine. Following the Jeffrey case, Brink stated that under the statutes governing veterinary medicine, collaborative practices performed on animals, such as chiropractic, would be construed as the practice of veterinary medicine and thus require that the practitioner be a licensed veterinarian. Brink referred to the administration of a therapeutic technique as part of the definition of veterinary medicine in the statutes. Neb. Rev. Stat. 71-1,154(3)(a) states that the "Practice of veterinary medicine and surgery means: (a) to diagnose, treat, correct, change, relieve, or prevent animal disease, deformity, defect, injury, or other physical or mental conditions, including the prescription or administration of any drug, medicine, biologic, apparatus, application, anesthetic, or other therapeutic or diagnostic substance or technique"

Brink provided the Board with information about how the statutes might affect the Board's direction in addressing the issue of collaborative practice. He referred to Neb. Rev. Stat. 71-1,166: "The department shall adopt and promulgate rules and regulations providing for . . . standards for the level of supervision required for particular delegated animal health care tasks and which determine which tasks may be performed by a veterinary technician and by unlicensed assistants." This section, according to Brink, gives veterinarians the ability to delegate tasks that are part of the practice of veterinary medicine to veterinary technicians and unlicensed assistants, but only if the particular task and the level of supervision that the veterinarian must provide is specified in the regulations, i.e. 172 NAC 180.

The statutes, in other words, give veterinarians the authority to delegate, but their ability to delegate is controlled by the regulations. The regulations delineate the tasks that can be delegated, to whom they can be delegated, i.e. veterinary technician or unlicensed assistant, and the level of supervision required. If the regulations do not list a particular task, then a veterinarian cannot delegate that task.

Persons at the meeting commented that unlicensed veterinary assistants often do tasks such as record keeping, cleaning, or ordering supplies, that are not specified in the regulations. Brink said that this is allowable because such tasks are not considered to be the practice of veterinary medicine.

Currently, the regulations governing veterinary medicine do not include supervisory levels for the tasks commonly performed by physical therapists, chiropractors, massage therapists, dentists, and other professions that might potentially provide care to animals. Therefore, there is currently a question regarding whether or not a veterinarian at this time can delegate such animal health care tasks to non-veterinarian practitioners.

Brink said that when he began studying the issue, he thought collaborating practitioners might be covered under the category of unlicensed assistant. If regulations were adopted that specified and set supervisory standards for the animal health care tasks performed by such professions, then veterinarians might be able to delegate animal health care tasks to such persons. However, when Brink discussed this idea with Lynn Melson of the Attorney General's office, she commented that an unlicensed assistant might need to be an employee of the veterinarian, since the regulations define unlicensed assistant as an individual "who is working in veterinary medicine,"

If the Board does wish to pursue the possibility of incorporating collaborative practice into the regulations governing veterinary medicine, Montgomery suggested that the Department request an Attorney General's opinion regarding who can be included in the category of "unlicensed assistant." The request for the opinion must come from the Department of Regulation and Licensure, and there would be a fee charged to the Board for the decision process. Montgomery could not predict how long the process would take. He also reminded the Board that an Attorney General's opinion is not law.

The Board discussed the urgency of the need to address the issue of non-veterinarians providing treatments to animals. Nationally, other states are proposing or enacting legislation on the issue. The AAVSB has incorporated the regulation of "animal chiropractic" and "animal physical therapy" into its Model State Practice Act. Ylander mentioned that a driving force in this issue comes from pet owners who are demanding therapies such as chiropractic treatments for their animals. Forney mentioned the contributions dentists can make to animal care, given that it is not uncommon for veterinarians, especially older veterinarians, to have received little training in dentistry during their veterinary education. Ylander has received inquiries regarding whether an animal behaviorist can treat animals for behavior problems. During the most recent legislative session, Senator Langmeier drafted – but did not introduce – proposed legislation that would permit a licensed chiropractor with a veterinary orthopedic manipulation (VOM) designation to treat an animal if the treatment was prescribed by a licensed veterinarian. Ylander mentioned that in some states, the practice acts for professions such as chiropractic have been changed allowing these practitioners to practice on animals.

Wright stated that there seemed to be two options the Board could pursue in terms of dealing with the issue of collaborative practice: 1) seek statutory changes giving the Board the ability to issue special license types to practitioners in other professions, allowing the practitioner to practice on animals, or 2) get an Attorney General's opinion to see if the issue can be addressed by changing the regulations.

Wright also stated that as the Board proceeds with the issue, he thought the following issues should be considered: 1) requiring separate facilities for human and animal health care, 2) establishing required levels of supervision, 3) getting input from other professions, 4) clarifying whether collaborative practitioners could be first providers, and 5) setting required educational levels.

On the issue of education, Ylander noted that the VOM designation in Senator Langmeier's proposal referred to the training provided by one particular program, and that other groups offered education in veterinary chiropractic that might be equivalent or perhaps superior to the VOM program. The Board noted that it would be difficult monitor and control the quality of the many online and short courses offered in veterinary complementary medicine. Another question that came up was who would be responsible for verifying that a person has had appropriate training. Cain and Wright both thought the responsibility lies with the veterinarian to make sure the person is properly trained.

Brink mentioned that regulations could be established requiring different supervisory levels for a particular task depending on the education level of the person performing the task.

Wright moved, seconded by Miller, to ask the Department to request an Attorney General's opinion regarding whether or not practitioners from other professions can be considered "unlicensed assistants." Voting Aye: Cain, Miller, Wright, Ylander. Voting Nay: None. Motion carried.

Brink, Forney, and Montgomery left at 10:20 a.m., at which time the Board recessed. Meeting resumed at 10:45 a.m.

The Board discussed the importance of keeping lines of communication open with those professions that might work collaboratively with veterinary medicine. The Board recommended that a letter be sent to the Chairs of the other professional boards. Such a letter should indicate that the Vet Board recognizes there is a concern with persons from other professions providing health care to animals, that the Board is currently working on the issue, and that the Board will solicit their input at a later date. The Board recommended this statement be kept fairly general given the fact that they wish to obtain an Attorney General's opinion prior to proposing specific changes. If a favorable opinion is made, allowing the Board to address the issue by changing the regulations governing veterinary medicine, Wisell suggested holding a "stakeholder's meeting," to which all people who might be affected by the changes would be invited. The boards for chiropractic, dentistry, massage therapy, medicine (acupuncture), physical therapy, and psychology were identified as those that should be contacted.

Cain inquired whether or not the Board should address the issue of animal nutritionists prescribing medicated feeds to animals independently of veterinarians. The Board suggested that the place to start would be by filing complaints against persons engaging in such a practice. Even though the veterinary statutes exempt persons selling medicated feeds from licensure requirements, the complaint would be made upon the basis of a non-veterinarian making a diagnosis.

The Board discussed supervisory requirements for delegated health care tasks. Wright said he would want greater than indirect supervision for collaborative practitioners. Cain, however, mentioned that this might not be practical, given the shortage of veterinarians in many parts of Nebraska, and the fact that some physical therapy or massage therapy tasks are relatively simple. It was asked if the supervisor must be a veterinarian. Wisell referred to the regulations (172 NAC 180), which define supervisor as “a licensed veterinarians or licensed veterinary technician as required ... for the particular delegated task.” If the Board does decide to propose regulations that include complementary therapies in the list of delegated health care tasks, Wisell said that they could identify who the supervisor must be (ie. veterinarian or veterinary technician) differently for different tasks.

Board members affirmed that at this time they do not want to pursue having the Board of Veterinary Medicine certify or credential collaborative practitioners. By delegating health care tasks to these practitioners through regulatory changes, instead, the ultimate responsibility for the care of the animal would remain with the veterinarian

The Board reviewed 172 NAC 99 (Provision of Nursing Care), which governs licensed nurses ability to delegate nursing care to unlicensed persons. Board members expressed appreciation for the “Scope of Practice Decision Tree” included in these regulations, and suggested a similar chart be created to represent the scope of practice and delegation of tasks within veterinary medicine. A decision tree might enable more general descriptions in the regulations of those veterinary tasks that can be delegated. It would also be an important educational tool.

The Board recessed at 12:23 p.m. Meeting resumed at 12:30p.m.

Wisell reviewed with the Board those tasks that Division staff will undertake:

1. Draft a letter to be sent to the Chairs of those Boards whose professions could potentially practice in collaboration with veterinary medicine. Board members recommended this letter include that the Board of Veterinary Medicine is studying the issue of practitioners in other professions providing care to animals, and that as the Board proceeds, it will seek input from other professions. Staff

- will provide Board members with a copy of the draft letter for their review. The Board suggested that a copy of the final letter also be sent to Senator Langmeier.
2. Draft a letter to Dr. Joann Schaefer requesting that the Department file a request with the Attorney General's office for an opinion on whether or not the veterinary practice statutes are broad enough to encompass regulatory changes that would allow other professions to work as unlicensed assistants within veterinary medicine. Wisell mentioned that Roger Brink and Dave Montgomery will probably be involved in drafting this request.
 3. Draft a "decision tree" for delegated animal health care tasks using the "Scope of Practice Decision Tree" from 172 NAC 99 as a model.

CONTINUING COMPETENCY

The Board discussed Dr. David Merkley's inquiry regarding whether veterinarians attending surgical consultations led by Dr. Merkley could receive continuing competency hours. The Board had decided at its meeting on November 8, 2005, that such consultations would be considered in-service training, and would thus need to be approved in advance by the Board in order to qualify for continuing competency. The Board now suggested that Dr. Merkley could submit a list of the more common consultation sessions he expects to provide in Nebraska, which the Board could then review for approval. After providing a session corresponding to one on a pre-approved list, Dr. Merkley would need to notify the Department of the date and location of the program in order for attending veterinarians to receive continuing competency hours.

ADDITION OF VETERINARIAN TECHNICIAN TO BOARD

Wisell informed the Board that veterinarian technicians have been notified regarding the opening on the Board for a veterinary technician member. Candidates for the position are expected to be interviewed during the July meeting of the Board of Health.

Cain moved, seconded by Miller, to adjourn the meeting. Voting Aye: Cain, Miller, Wright, Ylander. Voting Nay: None. Motion carried. The meeting adjourned at 2:05p.m.

Respectfully submitted,



Gail Miller, Secretary
Board of Veterinary Medicine and Surgery